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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

**FOSTER OGOLA, ELDER ENDURE  
HUMPHREY FISEI, FRESH TALENT,  
MATTHEW KINGDOM MIESEIGHA,  
CHRIS WILFRED ITONYO, AND NATTO  
IYELA GBARABE,**

**Plaintiffs,**

v.

**CHEVRON CORPORATION,**

**Defendant.**

**Case No. 14-cv-00173-SC**

**[PROPOSED] ORDER GRANTING  
DEFENDANT'S MOTION FOR THE  
SANCTION OF DISMISSAL FOR  
FIVE PLAINTIFFS' FAILURE TO  
COMPLY WITH DISCOVERY  
OBLIGATIONS**

Defendant Chevron Corporation's Motion for the Sanction of Dismissal for Five Plaintiffs' Failure to Comply with Discovery Obligations was regularly heard and duly considered by this Court. Based on the papers filed in support of and opposition to the motion, and oral argument thereon, the Court makes the following findings of fact and law:

1. Plaintiffs Foster Ogola, Elder Endure Humphrey Fisei, Fresh Talent, Matthew Kingdom Mieseigha, and Chris Wilfred Itonyo (the "Five Plaintiffs") were served with two sets of requests for production of documents and one set of interrogatories in the above-captioned case.

[PROP.] ORDER GRANTING DEFENDANT'S  
MOT. TO DISMISS  
CASE NO. 14-CV-00173-SC

1           2. The deadline for responding to this discovery was April 3, 2015. The Five Plaintiffs  
 2 did not respond on that date or at any time thereafter.

3           3. The Five Plaintiffs are not cooperating with their own counsel in the above-captioned  
 4 case.

5           4. Defendant's efforts to meet and confer have not yielded any commitment to respond to  
 6 the discovery by the Five Plaintiffs and there is no prospect that they will respond.

7           5. Applying the Ninth Circuit's five-factor test to determine whether dismissal is the  
 8 appropriate sanction favors dismissal based on the facts of this case. The first factor is the  
 9 public's interest in expeditious resolution of the litigation. This factor weighs in favor of  
 10 dismissal. *Wanderer v. Johnston*, 910 F.2d 652, 656 (9th Cir. 1990). The second factor is the  
 11 court's need to manage its dockets. This also weighs in favor of dismiss. *Id.* The third factor is  
 12 the risk of prejudice to the party seeking sanctions. If Chevron is forced to continue to litigate  
 13 against plaintiffs who provide no information in response to discovery, it is prejudiced. *Adriana*  
 14 *Int'l Corp. v. Lewis*, 913 F.2d 1406, 1412 (9th Cir. 1990). The fourth factor is the public policy  
 15 favoring disposition of cases on their merits. This factor weighs against dismissal as a sanction.  
 16 *Wanderer*, 910 F.2d at 656. The final factor is the availability of less drastic sanctions. It is  
 17 unlikely under the present circumstances that other sanctions will be effective in extracting  
 18 cooperation from the Five Plaintiffs. Because the Five Plaintiffs' relationship with their counsel  
 19 is broken and they are not cooperating, it is untenable to continue with them as representatives of  
 20 a putative class. See *Richardson v. City of Spokane Wash.*, 2013 U.S. Dist. LEXIS 180002, at \*7  
 21 (E.D. Wash. Dec. 23, 2013). Accordingly, I find that no less drastic sanction is feasible.

22           **IT IS HEREBY ORDERED THAT:**

23           Defendant's motion granted. The Second Amended Complaint is dismissed with  
 24 prejudice as to Foster Ogola, Elder Endure Humphrey Fisei, Fresh Talent, Matthew Kingdom  
 25 Mieseigha, and Chris Wilfred Itonyo.

1 IT IS SO ORDERED.  
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3 Dated: June \_\_, 2015 By: \_\_\_\_\_  
4 HONORABLE SAMUEL CONTI  
United States District Court Judge  
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